IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2006

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.NOS.717 AND 718 OF 2006
AND
M.P.NO.1 OF 2006

K.Thiyagarajan
S/o.Kannan
represented by his
Power Agent Kannan Pillai
93/B, North Car Street,
Vaitheeswaran Koil Village,
Sirkali Taluk. .. Appellant (Defendant) in both the appeals

Vs.

Tharumapuram Atheenam, Atheenakarthar,
Velur Sri Vaithianathaswamy Devasthanam,
rep. By its Heriditory Trustee
Srilasri Shanmuga Desika Gnanasambandha
Paramachariya Swamigal,
Thrumapuram,
Mayiladuthurai Taluk .. Respondent (Plaintiff)in SA.No.717/2006

Velur Sri Vaithianathaswamy Devasthanam
rep. By its Kattalai Thambiran,
East Car Street,
Vaitheeswaran Koil .. Respondent(Plaintiff) in SA.No.718/2006

These second appeals have been preferred under Section 100 C.P.C against the judgment and decree, dated 22.12.2005 made in A.S.Nos.128 and 127 of 2004 on the file of the learned Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree, dated 12.7.2004 made in O.S.Nos.179 and 129 of 1998 on the file of the learned District Munsif, Sirkali.

For Appellant : Mr.S.Periyaswami in both

For Respondents: Mr.S.Sounthar in both

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COMMON JUDGMENT

This judgment shall govern these two appeals, namely S.A.Nos.717 and 718 of 2006.

2.These two appeals have arisen in this way. The respondent filed O.S.No.179 of 1998 for recovery of possession and the same was decreed by the trial court. An appeal was preferred by the defendant/appellant in A.S.No.128 of 2004 and the same was dismissed. Aggrieved the defendant has brought forth S.A.No.717 of 2006. The appellant herein filed O.S.No.129 of 1998 for permanent injunction restraining the respondent/defendant from in any way interfering with the possession, except by due process of law. The suit was dismissed. Aggrieved the plaintiff took it on appeal in A.S.No.127 of 2004, which was also dismissed. Hence, S.A.No.718 of 2006 at the instance of the plaintiff, who is the appellant herein.

3.The plaintiff in O.S.No.129 of 1998 filed the suit with the following averments:

The suit property is situated at Door Nos.60 and 61 in R.S.No.131/1 at Vaitheeswarankoil. It belongs to the defendant Devasthanam. There was an agreement entered into between the plaintiff and the defendant in the year 1986. On 24.2.1991, the defendant paid Rs.501/- and also Rs.3000/- as advance and received receipts and in respect of the balance of Rs.1500/-, no receipt was given. The monthly rent was Rs.500/-. From December, 1989, it was raised to Rs.1000/- The plaintiff, after obtaining approval from the Town Panchayat, Vaitheeswaran Koil, raised construction. Till April, 1998, the plaintiff was paying rental and he was also running a shop therein and was running a tea stall also. During the Car festival, he used to remove the peeda stall and hand over the same for the purpose of taking the Car. The defendant was threatening the plaintiff to remove the same. Under these circumstances, he gave a complaint to the police and also he has brought forth the suit for permanent injunction.

4.The suit was resisted by the defendant by filing a written statement stating that the suit is not maintainable, since it should have been filed against the permanent trustee and thus, the suit filed against Kattalai Thambiran was not maintainable; that Door nos.60 and 61 was actually leased out to the plaintiff is not correct; that there was a shed, called as *Nattukanbar* in S.No.131/3; that it was leased out to the plaintiff for a monthly rent of Rs.500/-; that around that portion, he raised an unlawful compound wall; that when it was questioned, admitting his act done by him, he gave a consent letter on 20.2.1991 and he agreed to pay the rent at the rate of Rs.1000/- and he has also agreed that he would not raise any right in the construction made by him; that accordingly, he was making payment of Rs.1000/-; that the said portion was shown as 'A' schedule; that while the plaintiff was in occupation of 'A' schedule, against the agreement, in a part of the property in 'B' schedule, the plaintiff made an encroachment on 2.8.1989 to an extent of 10' x 8', which is

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shown as 'C' schedule; that in respect of this property, he was an encroacher and there was a demand made for the removal of the same, but the plaintiff refused to do so and under these circumstance, the defendant has filed a suit in O.S.No.179 of 1998 for recovery of possession of the entire property, which are marked as 'A' and 'C' schedules.

5.Necessary issues were framed by the trial court. On trial, O.S.No.129 of 1998 was dismissed and the aggrieved plaintiff took it on appeal in A.S.No.127 of 2004, which was also dismissed. Aggrieved, the plaintiff has brought forth S.A.No.718 of 2006.

6.Insofar as the other suit in O.S.No.179 of 1998 was concerned, the same was filed by the Devasthanam with the following pleadings:

The property situated in S.No.131/3 is *Nattukanbar* shed, which was actually leased out to the defendant on 1.3.1986 for a monthly rent of Rs.500/-; that without permission of the Devasthanam, in the year 1990, he raised a compound wall; that the same was questioned; that the defendant gave a consent letter on 20.2.1991 that the monthly rental can be raised as Rs.1000/- from 1.7.1990; that apart from that he agreed that he would not raise any right over the unlawful construction made by him; that he has been making payment in respect of the shed; that while the matter stood thus, he encroached upon the property to an extent of 10'x 8', which is shown as 'C' schedule, which is a part of 'B' schedule property belonged to the Devasthanam and under these circumstances, a notice was issued calling upon to determine the lease; that there was rental arrears also and thus, the plaintiff has filed the suit for recovery of possession.

7.The defendant/appellant herein resisted the suit, inter-alia, stating that there was neither encroachment nor consent letter; that he was actually running a tea stall; that it is true, originally, the rent was paid at the rate of Rs.500/-, which was raised to Rs.1000/-; that he got permission from the Town Panchayat and raised the construction at Door Nos.60 and 61; that there is no rental arrears and that the notice issued is not legal and hence, the suit was to be dismissed.

8.Necessary issues were framed by the trial court. The suit was decreed. Aggrieved the defendant took it on appeal and the appeal was dismissed. Hence, S.A.No.717 of 2006 has been preferred at the instance of the defendant.

9.At the time of admission, the following substantial questions of law were formulated by this Court:

> "1.Whether the Courts below are correct in deciding that the appellant is not entitled for the relief under Section 51 of Transfer of Property Act?
>
> 2.Whether section 106 of Transfer of Property Act is applicable for the Lease of the appellant who is admittedly running hotel in the suit property and no express lease is

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available and hence the respondent ought to have given 6 months notice to the appellant or not?

3.Whether the appellant is doing manufacturing business or not, so as to attract section 106 of Transfer of Property Act?"

10.The court has paid its anxious consideration on the submissions made and also looked into the materials available. On request by both sides, these two appeals are heard and the following judgment is rendered.

Admittedly, the appellant before this Court is a tenant under the respondent Devasthanam. Both the courts below have clearly found that what was originally leased out to the appellant/tenant was the shed, which was called as *Nattukanbar* and that the original rent was Rs.500/-, which was subsequently raised to Rs.1000/- and the intervening circumstance was that the appellant raised a wall without the consent of Devasthanam. When it was questioned, he issued a letter agreeing to pay rental at the rate of Rs.1000/- from 1.7.1990 onwards and he has also agreed that he would not raise any right over the construction made by him. While the matter stood thus, the appellant has filed a suit, stating that there was an attempted interference by the Devasthanam and he sought for permanent injunction restraining the respondent from in any way interfering with the possession, except by due process of law. The Devasthanam has also filed a suit for recovery of possession after determining the lease under notice under Section 106 of the Transfer of Property Act.

11.Pending appeals, there was a direction for handing over 'C' schedule property, which has also been done. As could be seen now, the question that would arise for consideration is whether the courts below were correct in decreeing the suit in favour of Devasthanam, directing the appellant to hand over the possession of the property, which was leased out to him. The contentions put forth by the appellant is that it was not a shed, which was originally given; that the constructions were subsequently made after the consent and approval and that the raising of rent from Rs.500/- to Rs.1000/- was not in view of the same. All the contentions were thoroughly negatived by the courts below.

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12.After looking into the materials available, the question that arises for consideration is whether the respondent was correct in issuing notice under Section 106 of the Transfer of Property Act determining the lease granting 15 days' time. As put forth by the learned counsel for the appellant, he was actually carrying on a residential hotel and the manufacturing process also is going on and under these circumstances, under Section 106 of the Act, notice should be given granting 6 months' time. Now, at this juncture, what are all required to be stated is that it is apt and proper to reproduce Section 106 of the Transfer of Property Act, which reads as follows:

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"Section 106. Duration of certain leases in absence of written contract or local usage:-(1)In the absence of a

contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice."

13.The learned counsel for the appellant would stress that in the instant case, it was a residential hotel. Even the plaintiff's witness has spoken to the fact that the he was running a hotel and that even as per the pleadings, he has actually allowed the pilgrims to stay over there and thus, it was a residential hotel; that he was also preparing food and manufacturing process is also going on there; and that The Tamil Nadu Catering Establishments Act clearly speaks about what is catering and where it applies also. In support of his contentions, the learned counsel for the appellant relied on the following two decisions:

(1)AIR 1982 SC 127 (IDANDAS VS. ANANT RAMCHANDRA PHADKE (DEAD) BY L.RS.); and

(2)1980 LAB.I.C. 100 (POONA INDUSTRIAL HOTEL LTD. VS. I.C.SARIN AND ANOTHER)

Relying on the above decisions, the learned counsel states that in the instant case it is clearly found that manufacturing process is going on and he is also preparing food and he is carrying on hotel, which is a residential one; that the said facts were clearly admitted by the plaintiff/appellant herein in the pleadings and the evidence and under these circumstances, it is a fit case where the lease should have been determined by issuing notice under Section 106 of the Act by granting 6 months' time and that issuing notice under Section 106 of the Act giving 15 days' time is invalid and hence, the judgments of both the courts below have got to be set aside.

14.Contrary to the above, it is contended by the learned counsel for the respondent/Devasthanam that even the admission made in the written statement by the appellant would go against the entire arguments put forth by the learned counsel for the appellant; that in paragraph 5 of the written statement it has been stated that the entire property belonged to Devasthanam and the property was given to the defendant under monthly Paguthi or rent arrangement in the year 1986 and a Paguthi was at first Rs.50/- per month, later it was enhanced to Rs.1000/- for December 1989 and the existing rent is Rs.1000/- per month. Thus, it has been clearly admitted that it has been given to the appellant under monthly rental basis and that it cannot be said that notice should given granting 6 months' time; that apart from that the decisions cited above were not applicable to the present facts of the case; that it was only a shed, which was given under a lease; that the appellant, subsequently, raised a construction unlawfully; that it was nothing but a breach of agreement originally entered into; that it was not a residential hotel and that no catering or manufacturing process is going on and under these circumstances,

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notice issued under Section 106 of the Act giving 15 days time would be suffice and hence, the judgments of the courts below have got to be affirmed.

15.After considering the submissions made, the Court is of the considered opinion that it is not a fit case to allow these second appeals. Admittedly, the appellant is a tenant in respect of a shed, which is called as *Nattukanbar* from the year 1986. Originally, Rs.500/- was paid as rent and there were advance payments made are all admitted facts. Subsequently, the appellant raised a compound wall and it was questioned. Thereafter, the rent was raised to Rs.1000/. The appellant never questioned the execution of letter and that he gave a letter in favour of Devasthanam agreeing to pay rent at the rate of Rs.1000/- and further, he agreed that he would not raise any right over the offending constructions made by him and thus, the property belonged to the Devasthanam. When there was an encroachment made in respect of 'C' schedule property, a part of 'B' schedule property, which belonged to the Devasthanam, the tenancy came to be determined. Under these circumstances, the appellant filed a suit that the Devasthanam should not interfere with the possession, except by due process of law. On the contrary, the Devasthanam also filed a suit for recovery of possession after determining the lease. Both suits were taken up for consideration. Now, 'C' schedule property has been vacated and the encroachment has been removed and hence, in respect of 'C' schedule property, no relief is required.

16.Insofar as 'A' schedule property is concerned, there was a shed, called as *Nattukanbar*, which was leased out to the appellant. He raised an offending construction. When it was questioned, he has executed a letter and under these circumstances, the rental was also raised. Now, the question to be decided at this stage is whether notice issued under Section 106 of the Act granting 15 days' time would be suffice or whether 6 months' time should be given. Under Section 106 of the Act, except agricultural or manufacturing purposes, in all other cases, 15 days' time is enough. In the instant case, what was leased out was only a shed and apart from that he was permitted to run a hotel. It has been categorically admitted in paragraph 5 of the written statement filed by the appellant that it was a monthly lease and apart from that, the monthly rent was also paid. The learned counsel for the appellant submits that what has been done by him was the manufacturing process and he is carrying on hotel business. Insofar as this is concerned, the original agreement was not for that purpose. This Court is able to see that there was a breach of agreement made between the parties. As per decision of the Supreme court reported in AIR 1982 SC 127, there are three tests to be followed while determining the nature of the lease. All the three tests, if applied, the premises, in question, at no stretch of imagination, could be termed as one leased out for manufacturing process. Hence, the contentions of the learned counsel for the appellant that there is a residential hotel and manufacturing process is going on and hence, the notice should be issued granting 6 months' time under Section 106 of the Act cannot be countenanced in the light of the reasons stated above. Apart from that, originally, there was a shed, around which, the appellant has raised an offending

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construction. He has also executed a letter stating that he would not claim any right over the offending construction made by him. Apart from that, originally the lease was not for residential hotel or manufacturing process. Under these circumstances, notice given determining the lease within 15 days' time is found to be valid. Hence, the judgments of the courts below in granting the relief in favour of the respondent were perfectly correct and rightly too. This Court is unable to see any reason to interfere with the judgments of the courts below. The contentions put forth by the learned counsel for the appellant do not carry any merit whatsoever.

17.In the result, both the second appeals deserve an order of dismissal. Accordingly, they are dismissed. No costs. Consequently, connected MP is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The District Munsif,
Sirkali.

3.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate Sr 63642
+2ccs to Mr.S.Periyasamy, Advocate Sr 63294

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